

Title 8, California Code of Regulations
Division 1, Chapter 6, Subchapter 11
Section 13694

13694. Procedure for Obtaining Damages from the Car Wash Worker Restitution Fund, Disbursement of Moneys from the Car Wash Worker Restitution Fund, Hearing.

The Labor Commissioner shall determine which claims are accepted, and the amount of money, if any, to be disbursed from the Car Wash Worker Restitution Fund on an accepted claim. The Commissioner shall make these determinations based on a consideration of the information requested in subsection (b) of this section.

(a) An employee who has been damaged by an employer's failure to pay wages, penalties, or other related damages, or a combination of them, must, before making a claim for payment from the Car Wash Worker Restitution Fund, attempt to collect the wages, penalties, or other related damages directly from the employer and the employer's surety bond.

(b) An employee or his or her authorized representative seeking recovery of unpaid wages, penalties or other related damages, or a combination of them, from the Car Wash Worker Restitution Fund must submit a claim in writing to the Labor Commissioner. The claim itself need not be in any particular form, but must include the following information and documents:

(1) Name, street mailing address, and home telephone number of employee for whom recovery is sought;

(2) Employee's social security number or individual taxpayer identification number;

(3) Name, street address, and telephone number (if known) of the employer that failed to pay the employee his or her wages, penalties, or other related damages;

(4) The period of time during which the wages were earned, giving both the beginning and ending dates specified as month, day, year;

(5) The number of hours worked or other basis for being paid wages;

(6) The promised rate of pay;

(7) The actual rate of pay;

(8) Amount of wages sought;

(9) Amount of penalty sought, if any, and Labor Code section pursuant to which the penalty is imposed;

(10) Amount of other related damages sought, if any, described and itemized;

(11) Amount of recovery sought less any amount recovered from the employer or the employer's surety bond, or both;

(12) Net amount of total recovery sought, if different from the amount in subsection (11);

(13) Proof of actual damages suffered;

(14) A copy of the employee's written assignment of the claim to the representative, if applicable;

(15) A declaration or affidavit under penalty of perjury that complies with the provisions of Section 2015.5 of the California Code of Civil Procedure containing information regarding attempts made by the employee or his or her representative to satisfy the claim by demand against the surety bond required by Labor Code Section 2055(b), and the results of the demand. The declaration or affidavit must also disclose the attempt(s) made to collect the recovery sought directly from the employer, and the results of the attempt(s). The employee's

representative may sign the declaration or affidavit required by this subdivision if the information submitted does not require the personal knowledge of the employee.

(c)The Information required in paragraphs (3) through (13) must be provided in one of the following ways:

(1) Submission of a copy of a judgment obtained from a court or an award from the Labor Commissioner which was issued after a contested proceeding which contains all of the information required in paragraphs (3) through (13) inclusive. If the judgment or award omits any of the required information, it shall be supplemented by a declaration under penalty of perjury which provides the missing information. The declaration must be signed by the employee or the employee's authorized representative, if the information submitted does not require the personal knowledge of the employee.

(2) Submission of a copy of a judgment obtained from the court or an award from the Labor Commissioner which was issued after an uncontested or default proceeding and a declaration under penalty of perjury that provides the information required by paragraphs (3) through (13) inclusive. The declaration must be signed by the employee or the employee's authorized representative, if the information submitted does not require the personal knowledge of the employee.

(3) If no judgment has been obtained from a court or an award from the Labor Commissioner, submission of a declaration under penalty of perjury which contains all of the information required in paragraphs (3) through (13), inclusive. The declaration must be signed by the employee or the employee's authorized representative, if the information submitted does not require the personal knowledge of the employee.

(d) If the Labor Commissioner determines that a declaration required under this section is insufficient to sustain a recovery from the Car Wash Worker Restitution Fund because of lack of information, or reason to believe that the information submitted is inaccurate, incomplete or false, the Labor Commissioner may order an investigatory hearing pursuant to subdivision (d) of this section.

(e) The Labor Commissioner shall have the authority to order an investigatory hearing to determine the validity of a claim seeking recovery from the Car Wash Worker Restitution Fund, including the amount of any damages actually suffered by the employee, if any. Notice of a hearing shall be served on the employer and employee either personally or by registered mail in accordance with the provisions of subdivision (c) of Section 11505 of the Government Code. The hearing shall be conducted by a Deputy Labor Commissioner, and may be held in the Division of Labor Standards Enforcement's district office having jurisdiction over the geographical location of where the nonpayment of wages allegedly occurred, or the Labor Commissioner may designate any other venue he or she deems appropriate. In the hearing, the employer and the employee shall have the opportunity to present evidence. The Labor Commissioner shall issue, serve, and enforce any necessary subpoenas.

NOTE: Authority cited: Section 2065(c) Labor Code. Reference: Section 2065, Labor Code.